

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>WILLIS BEAVER BERGAN,</p> <p>v.</p> <p>Respondent:</p> <p>CLEAR CREEK COUNTY BOARD OF COMMISSIONERS.</p>	
<p>Attorney or Party Without Attorney for the Petitioner:</p> <p>Name: Willis Beaver Bergan Address: 398 Deer Road R.F.D. Route #2 Evergreen, Colorado 80439-4034 Phone Number: (303) 670-2143</p>	<p>Docket Number: 40158</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on March 5, 2003, Karen E. Hart and Steffen A. Brown presiding. Petitioner appeared pro se. Respondent was represented by Robert W. Loeffler, Esq.

PROPERTY DESCRIPTION:

Subject property is described as follows:

**398 Deer Road
(Clear Creek County Schedule No. R014410)**

Petitioner is requesting an abatement/refund of taxes on the subject property for tax year 2001. The subject property consists of a single family dwelling containing 1,780 square feet of living area originally built in 1964, located in the Brook Forest Subdivision, approximately seven miles southwest of Evergreen, Colorado.

ISSUES:

Petitioner:

Petitioner contends that the subject property is overvalued and the Respondent's witness did not consider the condition of the improvements.

Respondent:

Respondent contends that the subject property is correctly valued using the market approach and the Clear Creek County Assessor took into consideration the condition of the property.

FINDINGS OF FACT:

1. Mr. Bergan, Petitioner, presented the appeal on his own behalf.
2. Petitioner did not present any comparable sales of his own. He maintains the appropriate value of his property is \$78,350.00 and discussed sales shown in Petitioner's Exhibit A which are three market comparable sales provided by the Clear Creek County Assessor from an earlier hearing. Mr. Bergan testified he did not understand why Comparable Sale 3 at 111 Deer Road was replaced by Comparable Sale 3 in Respondent's Exhibit #1, page 4, at 777 Aspen Way, since it is located on the same road as his house, is a more recent sale and more similar in size.
3. Mr. Bergan testified that the subject property is in a compromised situation citing Petitioner's Exhibit B, photographs 4 through 28, which show the condition of his house. Mr. Bergan testified to the following:
 - Photograph #4 shows planters which drain into the atrium
 - Photograph #5 shows moss growing between the Plexiglas
 - Photograph #8 is the addition to the original A frame structure
 - Photograph #9 shows the lack of insulation
 - Photograph #'s 11 through 13 show the unfinished pole barn
 - Photograph #14 is the jetted bath where the pipes freeze
 - Photographs #15 and 16 show water leakage
 - Photograph #18 shows infestation of the squirrel and squirrel urine stains
 - Photographs #19, 20, 23 and 24 show water stains
 - Photograph #22 is a trapezoid window with leakage
 - Photograph #25 shows the bath with no walls
 - Photograph #27 is a wall furnace
 - Photograph #28 is an old well water pressure tank
4. Under cross-examination, Mr. Bergan testified the pictures for the most part were representative of his home.

5. Upon questions from the Board, Mr. Bergan testified there was a wall furnace on the first floor; a propane cook stove was used to heat the kitchen; a wood stove, comfort glow propane heater and three electric baseboard heating strips were used to heat the living room; an electric baseboard heating strip is in the first floor bedroom and atrium area but the first floor bath has no heat. The second floor has three electric heaters.

6. Petitioner is requesting a 2001 actual value of \$78,350.00 for the subject property.

7. Respondent's witness, Ms. Diane Settle, the Clear Creek County Assessor, presented an indicated value of \$156,700.00 for the subject property, based on the market approach.

8. Respondent's witness presented three comparable sales ranging in sales price from \$127,900.00 to \$156,000.00 and in size from 1,056 to 1,700 square feet. After adjustments were made, the sales ranged from \$164,645.00 to \$178,240.00.

9. Ms. Settle testified the subject property is located about seven miles southwest of Evergreen, Colorado in an older area known as Brook Forest Subdivision. Homes in the subdivision were originally built as unfurnished "A" frames or small cabins, but there is also some new construction.

10. Ms. Settle testified all of the comparable sales are from the subject subdivision. They are similar in year of construction, are either A-frame, A-frame with an addition or cabins and she tried to find properties which were in similar fair condition.

11. Ms. Settle described the sales testifying that adjustments were made for time, square footage, number of bathrooms and land size difference. Ms. Settle further testified she would now consider the subject property to have only one bath because of the description of the house testified to by Mr. Bergan. However, she does not feel that the value would change.

12. In cross-examination Ms. Settle explained that the sale used in a previous hearing located at 111 Deer Road was replaced with 777 Aspen Way since it was more comparable and was a similar A-frame design as the subject.

13. Upon questions from the Board, Ms. Settle admitted she did not adjust for a difference between fair and average condition since she could not extract an adjustment from sales used in her analysis, but agreed that some type of adjustment should be made.

14. Respondent assigned an actual value of \$156,700.00 to the subject property for tax year 2001.

CONCLUSIONS:

1. Petitioner presented sufficient probative evidence and testimony to prove that the subject property was incorrectly valued for tax year 2001.

2. The Board carefully reviewed Petitioner's pictures and description of the

improvements and would agree the subject property lacks maintenance and includes a number of deficiencies which may not have been taken into consideration by Respondent.

3. The Board would agree with both Respondent and Petitioner that the lack of heat and privacy walls in the main level bath area is a deficiency.

4. Although the Petitioner did not present his own sales but relied upon those given him by Clear Creek County, the Board carefully reviewed and agrees with Petitioner that the sale at 111 Deer Road is more similar to the subject in terms of the date of sale, gross living area and site size when compared to Respondent's comparable sale at 777 Aspen Way.

5. The Board was not convinced that no value difference exists between fair and average condition. By the very nature of having two classifications it would be reasonable to expect an adjustment. The Board also finds the site size adjustment of \$5,400.00 for a nine one hundredth of an acre difference to be excessive and questions if it would be recognized by a buyer.

6. After careful consideration of all the evidence and testimony, the Board adjusted for condition, bathroom differences and site size, placing weight on 111 Deer Road since it was the most recent sale within the given time frame, is similar in square footage and has the same site size as the subject.

7. The Board concluded that the 2001 actual value of the subject property should be reduced to \$143,000.00.

ORDER:

Respondent is ordered to cause an abatement/refund to Petitioner, based on a 2001 actual value for the subject property of \$143,000.00.

The Clear Creek County Assessor is directed to change his/her records accordingly.

APPEAL:

Petitioner may petition the Court of Appeals for judicial review within 45 days from the date of this decision.

If the Board recommends that this decision is a matter of statewide concern, or if it results in a significant decrease in the total valuation of the county, Respondent may petition the Court of Appeals for judicial review within 45 days from the date of this decision.

If the Board does not make the aforementioned recommendation or result of Respondent alleges procedural errors or errors of law by this Board, Respondent may petition the Court of Appeals for judicial review within 45 days from the date of this decision.

DATED and MAILED this 3rd day of April, 2002.

BOARD OF ASSESSMENT APPEALS

Karen E Hart

Karen E. Hart

Steffen A Brown

Steffen A. Brown

This decision was put on the record

APR 02 2003

I hereby certify that this is a true and correct copy of the decision of the Board of Assessment Appeals.

Penny S. Lowenthal
Penny S. Lowenthal

